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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,852	09/26/2003	Ming Huang	BP3026-H47-P12	9764
7590	09/16/2005			
			EXAMINER	
			TON, ANABEL	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/670,852	HUANG, MING	
	Examiner	Art Unit	
	Anabel M. Ton	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 July 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-6 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-6 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (6,585,388) and further in view of Kobayashi et al (JP409099692A).

3. Kim discloses the instant invention except for the recitation of a refill-switching unit for switching two refills. Kim discloses a rotary tube in an upper tube and being a hollow tube (40), a stop cap (18) at the top of the rotary tube a transparent mast embedded into the stop cap (2) a positioning tube at an inner upper end of the rotary tube (42), a sleeve resisting against a lower edge of the positioning (24) tube and embedded with an inner wall of the rotary tube, a light emitting set installed at and secured to a lower end of an inner wall of a positioning tube the light emitting set being installed with a light emitting body and a battery set (10-16) ; a spring installed between the light emitting set and the stop cap(29), wherein a top of the refill switching unit of the lower tube is fixed with an electric disk and is conductive to the light emitting set atop of the electric disk is installed with a conductive spring and a conductive plate(10-16), one lead of the light emitting body is in contact with an electrode at a top of the battery set and another lead of the light emitting body extends downward to a lower side of a casing, the lead is in contact with the conductive plate on the electric disk, the light emitting body lights up otherwise the light emitting body extinguishes when the lead is

not in contact with the conductive plate on the electric disk (Abstract). Kobayashi et al discloses a double refill pen with a rotating mechanism to selectively choosing from one of two pen refills (abstract, figs 1-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teaching of the double refill pens and rotating mechanism for selecting the desired refill in the device of Kim, since as taught by Kobayashi, double refill pens with such a mechanism for selecting a desired pen refill is desired for the purpose of providing the user with a variety of writing instruments and such an implementation into the device of Kim would have been purposeful to provide a user with a illuminable writing instrument that would have such a desired feature.

- The transparent mask is integrally formed with the stop cap;(Kim)
- The length of the conductive plate is equal to the radius of the electric disk;(Kim)
- The two refills is a ball pen refill and a touch control refill (Kobayashi);
- The top center of the rotary portion of the refill switching unit has a positioning post which is non rotational a positioning trench is formed on the positioning post for receiving a rib at the bottom end of the electric disk; (figs 4-7)

Response to Arguments

4. Applicant's arguments filed 07/12/05 have been fully considered but they are not persuasive. Applicant's arguments state that the claims have been retyped and arranged on separate sheets. Applicant has not addressed the rejections made to claims 1-6 as presented in the first office action. As corrected, applicant's claims remain rejected as recited above.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anabel M. Ton whose telephone number is (571) 272-2382. The examiner can normally be reached on 08:00-16:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anabel M Ton
Examiner
Art Unit 2875

AMT



Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800